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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

FILE: LIN 02 048 51268

Office: NEBRASKA SERVICE CENTER

Date: JUL 17 2003

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:


**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Nebraska Service Center approved the nonimmigrant visa petition on January 10, 2002. On October 8, 2002, the director issued a notice of intent to revoke approval of the petition. The petitioner submitted a rebuttal on October 31, 2002. In a letter dated December 18, 2002, the director determined that the petitioner overcame the grounds for revocation. On March 12, 2003, the director revoked approval of the petition. The director had not issued a new notice of intent to revoke prior to this revocation. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for entry of a new decision.

The petitioner is a dance studio. The beneficiary is a dance instructor and competitor. The petitioner seeks extension of the beneficiary's stay in the United States in O-1 classification, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to continue to employ him in the United States as a "dance instructor/national dance competitor" for a period of one year at an annual salary of \$30,000.

The director revoked approval of the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner submitted a brief.

The case will be remanded for the issuance of a notice of intent to revoke, to be followed by a new decision.

8 C.F.R. § 214.2(o)(8)(iii)(A) provides, in pertinent part, that:

The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that . . . The statement of facts contained in the petition was not true and correct; . . . The approval of the petition violated paragraph (o) of this section or involved gross error.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.*

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's decision is withdrawn. The case is remanded to the director for issuance of a notice of intent to revoke and entry of a new decision, which, regardless of the outcome, is to be certified to the AAO for review.